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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 2nd December 1952

No. 19/324/52-Elec.III.—WHEREAS the election of the persons named in the Schedule to the Commission's Notification No. 19/261/52-Elec.III, dated the 18th August, 1952, as members of the Legislative Council of the State of Madras by the members of the Madras Legislative Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri S. K. Sambandhan of Kurinjipadi, South Arcot District, Madras State;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of sections 86 and 87 of the said Act, for the trial of the Election Petition calling in question the aforesaid election, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, MADRAS

Monday the 24th day of November 1952.

Present:—Sri K. B. Venkatachala Ayyar ... *Chairman.*

Sri Syed Imamuddin & Sri K. Chandrasekharan ... *Members.*

ELECTION PETITION No. 324/52

Sri S. K. Sambandhan. . . . . *Petitioner.*

Versus

Sri M. Surya Rao 54 others. . . . . *Respondents.*

This petition coming on for hearing on the 15th and 17th days of November '52 in the presence of Mr. T. Lakshmiah for the petitioner, Mr. P. Satyanarayana Raju, Government Pleader for Respondent 1, Mr. V. V. Raghavan for Respondent 7, Mr. T. Chengalvarayan for Respondent 11, Mr. K. Ramachandra Rao for Respondent 16, Mr. N. Sundara Iyer for Respondent 17, Mr. K. Subramanian for Respondents 20 and 22, Mr. S. Venugopala Rao for Respondent 24, Respondent 23 in person and the rest of the Respondents remaining *exparte* and upon reading the petition, the statements filed by Respondents and the relevant documents in

support thereof and upon hearing the arguments of both sides and the petition having stood over till this day for orders, the Tribunal delivered the following order :—

ISSUES

1. Whether the Returning Officer in counting votes ought to have followed the provisions of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 which were in force on 4th March 1952?
2. Whether the amended rules have retrospective effect?
3. If so, are the said rules *ultra vires*?
4. Whether the petitioner is entitled to have the votes recounted?
5. To what relief is the petitioner entitled?

ORDER

The petitioner Sri S. K. Sambandhan was one of the candidates for the election of twenty-four members to the Madras Legislative Council by the elected members of the Madras Legislative Assembly. As a result of the poll, he was defeated and respondents 2 to 25 were declared elected. He has filed this petition for a declaration that the election is void and for a direction to the Returning Officer to recount the votes and declare him elected.

2. The notification by the Governor calling upon the members of the Legisl... Assembly to elect 24 members to the Legislative Council was issued on 4th March 1952 under the powers vested in him by section 18(1)(b) of the Representation of the People Act XLIII of 1951 (hereafter referred to as the Act). The petitioner filed his nomination on 11th March 1952, the last date for filing of nominations being 13th March 1952. The last date for withdrawal of nominations was 17th March 1952 and the polling was held on 27th March 1952. The Central Government acting under the powers conferred by section 169 of the Act substituted new rules in place of rules 91 and 96 to 102 and Schedule III of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, which were in force on 4th March 1952. The amended rules were published in the Gazette on 10th March 1952. The election to the Legislative Council is based on the system of proportional representation by means of the single transferable vote and in the matter of counting of votes the Returning Officer followed the amended rules. The main ground urged by the petitioner is that the Returning Officer erred in applying the amended rules, which came into force on 10th March 1952, to the election which, according to him, must be deemed to have commenced on 4th March 1952 by the issue of the notification by the Governor, and that the rules which were in force on 4th March 1952 ought to have been followed.

3. Before dealing with this question it would be convenient to dispose of two other contentions urged by the learned Counsel for the petitioner, as they do not call for detailed examination. The first contention is based on the wording of the notification which runs as follows :—"In exercise of the powers conferred by clause (b) of sub-section (1) of Section 18 of the Represention of the People Act 1951 (Central Act XLIII of 1951), His Excellency the Governor of Madras hereby calls upon the members of the Legislative Assembly of the State of Madr constituted under the Constitution of India, to elect twenty-four members t Legislative Council of the said State in accordance with the provisions of the Act aforesaid and of the rules and orders made thereunder, before the 5th April 1952 the date appointed for the purpose by the Election Commission". For the petitioner it is argued that the expression "rules and orders made thereunder" means rules made under the Act before 4th March 1952, which is the date of the notification. It is contended that by force of the notification itself, rules made after 4th March 1952 cannot apply to this election.

4. The notification has only adopted the wording of section 18(1)(b) which empowers the Governor by a notification in the Official Gazette to call upon the members to elect "in accordance with the provisions of this Act and of the rules and orders made thereunder". The notification could have no greater effect or validity than the provision in section 18(1)(b), nor does it in any respect depart from the terms of the said sub-clause. The contention for the petitioner that the expression "rules and orders made thereunder" means rules that had been made and were in force on the date of the notification is obviously unsound. If this interpretation is applied to section 18(1)(b), it would lead to this absurdity, that rules should have been made before the Act itself. In our opinion the words

"rules and orders made thereunder" do not indicate the time at which they are made. They only mean rules made by the rule making authority under the power conferred by the Act. The word 'made' is not used to indicate the time when the rules were made.

5. The next contention is based on the wording of the preamble to the amended rules. It is necessary to set it out in full: "In exercise of the powers conferred by section 169 of the Representation of the People Act, 1951 (XLIII of 1951), the Central Government, after consulting the Election Commission, hereby directs that the following further amendments shall be made in the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951". It is argued that the rules were not made by the Central Government which is the authority empowered to make rules under section 169 of the Act; the Central Government merely directed somebody else to make the rules. But the learned Counsel for the petitioner could give no indication of the person who was directed to make the amendments. In our opinion the argument has no force. It is seen that the expressions "the Central Government is hereby pleased to make the following amendments", or "the Central Government hereby directs that the following further amendments shall be made" are forms which are indiscriminately used. It is not as if the word "directs" is used in the sense that the Central Government directed somebody else to make the amendments. However, whether the expression "directs" is appropriate or not, any doubt in this matter is set at rest by a reference to the wording of the actual amendments that follow. The expression used with reference to each new rule is, "the following rule shall be substituted". It is clear from this that the Central Government itself has made the amendment. There is therefore no substance in the contention of the petitioner.

6. We shall now deal with the main question that arises for decision in this case, namely, the applicability of the amended rules to this election. For the petitioner it is contended that the election commences with the issue of the notification by the Governor, and that once it is issued the rules cannot be changed so as to apply to the ensuing election. The following observations in the judgment of the Madras High Court in Ponnuswamy *vs.* Returning Officer, Namakkal (S.C.), (1952) 1 M.L.J. 775 at page 781 were relied on in support of this contention. "A fair reading of the provisions of Article 329 in the context of general elections leads me to hold that the word 'election' is used in a comprehensive sense. I therefore hold that the word 'election' in Article 329 means the process starting from the writ and ending with the declaration of the result". Assuming that the election commences with the issue of the notification by the Governor, what follows? The contention put forward by the learned Counsel for the petitioner is that thereafter no change, whatever be its character, could be made in the rules so as to be applicable to the election, which is governed solely by the rules then in force. It is said that a candidate has a vested right to have the election conducted in accordance with the rules then in force. This is an extreme contention which will not bear scrutiny. A perusal of the Representation of People (Conduct of Elections and Election Petitions) Rules, 1951, which contain 123 rules and six schedules shows that they deal with the various stages of the election, beginning with the public notice of the intended election, the several forms to be used, duties of polling officers, how the poll is to be conducted, ballot boxes and their safe custody etc. To say that a candidate has a vested right in regard to these matters and that they cannot be amended in any respect while the election in progress is as a proposition of law wholly unsustainable. We were not referred to any authority which lends support to such a contention. The rule applicable to the construction of statutes which is also applicable to Statutory rules is thus stated in Maxwell on Interpretation of Statutes (9th edition)—page 222:—"No rule of construction is more firmly established than this: that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment." At page 232, the learned author observes: "that the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts, even where the alteration which the statute makes has been disadvantageous to one of the parties." To the same effect is the opinion of Craies who in his *Statute Law* (5th edition), page 368 states as follows:—"It is a well recognised rule that statutes should be interpreted, if possible, so as to respect vested rights." But it must be a "vested right" in the strict sense in order to raise the presumption, for "there is no presumption that an Act of Parliament is not intended to interfere with the existing rights". The principle is well established and it is unnecessary to refer to all the other authorities cited by learned Counsel on both sides.

7. It is not contended that under section 160 of the Act, the power of the Central Government to make rules could not be exercised as and when necessary. Such a contention cannot be sustained, in view of sections 14 and 21 of the General Clauses Act (X of 1897).

8. Part II Chapter VI which consists of rules 90 to 109 deals with the counting of votes at elections in Council Constituencies, at elections to fill seats in the Council of States and at elections by the members of the Legislative Assemblies to fill seats in the Legislative Councils. At this stage it will be convenient to refer to the scope and nature of rules 91 to 102, and Schedule III for which new rules and a new Schedule have been substituted. The effect of these rules may be summarised as follows :—Under the earlier rules, the quota was arrived at by dividing the total number of valid votes by a number exceeding by one the number of vacancies to be filled and by adding one to the result. In this process fractions are to be disregarded. The new rules are practically the same except for this difference, that a notional value of 100 is attributed to each vote. The effect of attributing this notional value is that the fraction to be disregarded is considerably reduced. This is also seen from the allegations made in paragraph 9 of the petition *viz.* that under the earlier rules disregarding a fraction of 21/25, the quota was 15, while under the amended rules it became 14·85. The petitioner could have no reasonable ground for complaint that the application of the amended rules placed him at a disadvantage, for in this respect they were more favourable than the earlier rules. The notional value is applied in regard to the transfer of surplus votes from the candidates declared elected to the continuing candidates. It was urged that in the matter of excluding candidates under rule 100, there is a material difference between the old and new rules, and that the 25th respondent would have been excluded before the petitioner as the latter had obtained more original votes, but that under the amended rules which were followed by the Returning Officer, the petitioner was excluded. We are, however, unable to find any material difference between the earlier and the amended rule 100 except differences arising from the attribution of a notional value to each vote.

The system of proportional representation by means of the single transferable vote is claimed to be an accurate method for ascertaining the real choice of the electorate. The rules in Chapter VI—Part II of the rules deal with the procedure to be followed under this system for ascertaining the choice of the electorate such as ascertainment of quota, declaring candidates with quota elected, transfer of surplus votes, elimination of candidates lowest on the poll etc. The amended rules have not the effect of validating votes which were invalid before or invalidating valid votes. The object is the same, namely ascertaining the preference of the electors; the changes are only in the details of the procedure to be adopted for ascertaining it.

9. Could it be said that a candidate has a vested right in regard to such a matter? The decision of the United States Supreme Court in the case of United States *vs.* Classic (American Constitutional Decisions by Fairman—page 441) was relied on for the petitioner. That was a case in which the Commissioners of Elections conducting a primary election to nominate a candidate "willfully altered and falsely counted and certified the ballots of voters cast in the primary election." The passage in the judgment at page 450 which was relied on runs as follows:— "The right to participate in the choice of Representatives for Congress includes the right to cast a ballot and to have it counted at the general election whether for the successful candidate or not". This does not touch the present question and is of no assistance to the petitioner. In the present case there is no question of any interference with the right of the electors to cast their votes nor any false counting of the votes cast, nor was there any departure from the rules by the Returning Officer in the matter of counting of votes. No authority has been cited for the petitioner to support the contention that he has a vested right in regard to the manner of counting of votes.

10. The two cases cited by the learned Government Pleader who appeared for the first respondent and reported in Sen and Poddar Election Cases at pages 253 and 363, are relevant, though they were decided with reference to the Election Rules in force under the Government of India Act, 1935. In both those cases the Commissioners held that rules made by the Governor had retrospective effect so as to apply to an election commenced before they came into force The following passage in Black on Interpretation of Laws (Second Edition) at page 584 clearly sets forth the principle which in our opinion is applicable to this case. "But even without an express saving clause, where the new law is substantially a re-enactment of the old, merely changing modes of procedure, but not changing the tribunal or the basis of the right, and when it takes effect simultaneously with the repeal of the old law, it must be presumed that the Legislature intended that proceedings

instituted under the old law should be carried to completion under the new." We are of opinion that the amended rules did not deprive the petitioner of any vested right which he could be said to have had at the time the notification was issued by the Governor. Consequently the Returning Officer did not err in following the procedure laid down by the said rules.

11. A further defence is raised by the 16th respondent in paragraph 6 of his statement that "the petitioner having taken the risk of a chance of success as per the new rules, he is estopped from questioning the procedure followed by the Returning Officer". In argument this plea was put forward only as amounting to waiver and not as an estoppal. The facts on which this plea is based are also set up in the written statement of the first respondent. It is said that at the time of counting of votes the petitioner did not only raise no objection to the Returning Officer applying the amended rules, but he even claimed a recount on the basis of the said rules. However, as we have come to the conclusion that the election is not vitiated by reason of the application of the amended rules, it is unnecessary to consider how far the facts set up are sufficient to establish a case of waiver.

12. *Issue* 1.—We find this issue against the petitioner.

Issues 2 *and* 3.—For the petitioner it is not contended that the amended rules are *ultra vires* but only that they do not apply to this election. This has already been dealt with. We find that the amended rules are not *ultra vires*.

Issue 4.—We find that the petitioner is not entitled to have the votes recounted.

Issue 5.—In the result the petition is dismissed. The petitioner will pay the costs of the first respondent which we fix at Rs. 350. He will also pay the costs of the other respondents who were represented by advocates which we fix at Rs. 350. The same will be equally divided among them. In cases in which the same advocate represents more than one respondent only one set of costs is allowed. Costs will carry interest at 3 per cent. per annum from this date.

Dictated to the Shorthand writer and pronounced in open court this the 24th day of November 1952.

(Sd.) K. B. VENKATACHALA AYYAR.
(Sd.) SYED IMAMUDDIN.
(Sd.) K. CHANDRASEKHARAN.

P. S. SUBRAMANIAN,
Officer on Special Duty.

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